

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 221 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BOARD OPINION

Versus

MAHESHWARI MILLS LTD.

Appearance:

1. COMPANY PETITION No. 221 of 2001
BOARD OPINION for Petitioner No. 1
NANAVATI & NANAVATI for Respondent No. 1
MR HM BHAGAT for Respondent No. 2
NOTICE SERVED for Respondent No. 3-4,7
NOTICE UNSERVED for Respondent No. 5,8
MR SS PANESAR for Respondent No. 6
..... for Respondent No. 9-12,14-16
MR DS VASAVADA for Respondent No. 13

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 12/11/2003

ORAL JUDGEMENT

This petition arises from the opinion dated 15.11.2001 forwarded by the Registrar of the BIFR in Case No.156 of 1989 (II) based on the minutes of the proceedings dated 27.9.2001 before the BIFR. The BIFR

has recommended that it is just, equitable and in public interest that M/s. Maheshwari Mills Ltd. should be wound up under Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the Act").

2. The petition was admitted by this Court's order dated 29.8.2003. The admission of the petition was ordered to be advertised in "Jansatta" and "Indian Express". Publication of the notice in the Official Gazette was dispensed with. The Official Liquidator attached to this Court was appointed as provisional Liquidator and was directed to take over the properties and assets of the Company and to make an inventory of the properties, assets, articles, machinery etc. of the Company.

The Official Liquidator states that he took over possession of the assets of the Company on 10.10.2003.

3. Mr HM Bhagat, learned counsel for the IDBI, which was the operating agency and which was directed to see that the notice of admission was published, has tendered the affidavit dated 18.9.2003 of Mr Subroto Gupta, Deputy General Manager, IDBI, Ahmedabad stating that IDBI has issued advertisement on 10.9.2003 in "Indian Express" and "Jansatta", both Ahmedabad editions.

4. When the matter is called out for final hearing today, Mr Dave for Nanavati & Nanavati appears for M/s. Maheshwari Mills Ltd., Mr DS Vasavada appears for Textile Labour Association, Mr Bhagat appears for IDBI and Mr Panesar appears for Union Bank of India.

5. Having perused the opinion of the BIFR and having heard the above named learned counsel for the parties, it appears to the Court that the BIFR had already given an opportunity to the Company for rehabilitation and a scheme for such rehabilitation was sanctioned in May, 1996. However, the BIFR concluded at the hearing on 7.3.2000 that the scheme sanctioned by the Board on 1.5.1996 had failed, as the existing promoters had not been able to turn around the Company. The operating agency IDBI was also directed to advertise for the change of management. The existing promoters could also bring a co-promoter and submit a proposal. The workers were also permitted to submit a scheme, if any, to the operating agency. The Court is informed that no such proposal was submitted and ultimately at the hearing held on 31.5.2001, the BIFR was of the prima-facie opinion that the Company was not likely to make its net worth exceed

the accumulated losses within a reasonable time while meeting all its financial obligations and that the Company as a result thereof was not likely to become viable in future and prima-facie opinion was formed that it was just, equitable and in public interest that the Company should be wound up under Section 20 (1) of the Act. A show cause notice was ordered to be published and suggestions/objections were invited. After such notice was published, at the hearing which took place on 27.9.2001, the BIFR confirmed its earlier prima-facie opinion for the winding-up of the Company as the Company is not likely to make its net worth exceed its losses within a reasonable time while meeting all its financial obligations and, therefore, the Company is not likely to become viable in future.

In view of the above opinion, the present Company Petition has been registered.

6. No affidavit has been filed on behalf of the respondent-Company M/s. Maheshwari Mills Ltd.. The Court, therefore, proceeds on the basis of the findings given by the BIFR which are already quoted hereinabove.

7. In view of the aforesaid uncontroverted findings, this Court accepts the opinion of the BIFR and, therefore, passes the following order:-

The Company Petition is allowed in view of the opinion of the BIFR as rendered in Case No.156 of 1989 at the hearing on 27.9.2001. M/s. Maheshwari Mills Ltd. is ordered to be wound up in accordance with the provisions of the Companies Act, 1956. The Official Liquidator attached to this Court, who is already appointed as provisional Liquidator of the Company, is appointed as the Official Liquidator and is directed to proceed further in accordance with the provisions of the Companies Act, 1956.

The Company Petition is accordingly allowed in the aforesaid terms with no order as to costs.

(M.S. SHAH, J.)

zgs/-